



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/150519

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 06, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA), now known as the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on July 31, 2013, at West Bend, Wisconsin.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested occupational therapy (OT) services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By written submittal of: Mary Chucka, OTR  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Washington County. At the time of the PA request she was 5 years old and certified as eligible for MA.
2. Petitioner is diagnosed with generalized muscle weakness, motor coordination disorder, and Down's syndrome.
3. On May 21, 2013 the petitioner's private OT provider submitted a PA request (# [REDACTED]) to the OIG. The request was made for 13 sessions of OT, 1 time per week, to begin on May 17, 2013.
4. On June 18, 2013 the OIG issued a notice to petitioner denying the PA request because it concluded that the OT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

### DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). Section DHS 101.03(96m) defines medical necessity in the following relevant provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and

(b) Meets the following standards:

...

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §DHS 101.03(96m).

The OIG argues that the information submitted by the provider did not show why the requested OT is required to prevent, identify or treat a recipient's illness, injury, or disability. The OIG denied the request in part because the evaluation did not show the medical need for the services. More specifically, the agency was asking for more information on the "problem areas" that the provider was treating. For instance, one of the identified problems to be treated is petitioner's decreased hand strength. The problem is that the evaluation and the provider's plan of care do not show any objective clinical measurement of that impairment so that any changes could be identified, measured, or even compared to show improvement as a result of the OT provided. It is clear that the testing performed for petitioner (PEDI & Peabody) show she has limitations or delays. However, that testing does not show that those limitations were due to a lack of hand strength, or what the level of her strength is. The PA Instructions specifically require a baseline established by objective measurements. And, I must agree with the OIG that the measurement cannot simply be task completion. If the deficit cannot be quantified, there is no basis for a skilled level of intervention by a therapist.

Based upon my review of the record in this case, I must agree with the OIG's decision to deny the PA. The basic assertion of the OIG has been the lack of objective, measurable evidence that would justify the medical need for OT services in a clinical setting as requested. I agree that that information has not been presented, and this is not meant to diminish the challenges petitioner faces. I must conclude the requested OT in this case is not covered by the MA program. The OIG was therefore unable to approve the requested service.

I note for petitioner's benefit that this is not a bar to submitting another PA request for OT. The requesting provider will need to provide the basic documentation to support another request, however.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly denied petitioner's PA request for OT.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

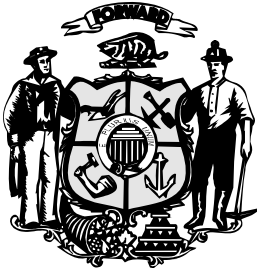
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of August, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 22, 2013.

Division of Health Care Access And Accountability